

LABOUR DEPARTMENT

The 21st September, 1994

Order No. 1987-6 Lab./290.- In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s. Stencil Apparels, Pvt. Ltd., Gurgaon *versus* Shanti Swaroop.

IN THE COURT OF MRS. NIRMAL YADAV, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON.

Reference No. 350 of 1991

between

SHANTI SWAROOP, C/O SHARDHA NAND, GENERAL SECRETARY,
AITUC OFFICE, 214/4 MARLA, GURGAON

and

THE MANAGEMENT OF M/S. STENCIL APPARELS PVT. LTD., GURGAON.

Present:

Shri Shardha Nand for the workman.

Shri S. K. Yadav for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 (in short "the Act"), the Governor of Haryana referred the following dispute, between the parties mentioned above, to this Court for adjudication,—*vide* Haryana Government Labour Department Government Order No. 30937, dated 14th August, 1991 :—

1. The transfer of Shri Shanti Swaroop is legal and justified? If not, to what relief is he entitled?

2. The facts according to petitioner's claim statement are that he was appointed as tailor with the responsibility of stitching of the salary of Rs. 1,300 p.m. According to petitioner, he had constituted Stencil Apparels Pvt. Ltd. (AITUC) Gurgaon alongwith other workers and was Advisor of the union. He had been in constant contact with the management regarding demands of the workers. A demand notice dated 15th January, 1991 was submitted to the management and labour authorities regarding demands of the workers. Management got annoyed and in order to disorganise the union, petitioner alongwith two other workers, Pradeep Kumar and Pradeep Lal were transferred to the office at Delhi factory. It is stated that Pradeep Kumar was President and Pradeep Lal was Secretary and petitioner himself was Advisor of the union. Management stated that on 25th January, 1991 a compromise was effected before the Labour-cum-Conciliation Officer and transfer of Pradeep Kumar was cancelled and he was allowed to join at Gurgaon. However, transfer of Pradeep Lal and petitioner was not cancelled. According to petitioner, no worker could be transferred beyond a distance of 5 Kilometre according to Haryana Model Standing Orders and as such, transfer of petitioner was illegal and was ordered to harass the petitioner.

3. The facts if the petitioner is contested by the management stating that reference is bad in law and not in fact. It is stated that transfer order is a managerial prerogative and should not be interfered with by the court. On merits, it is stated that petitioner was appointed on 15th October, 1990 and not on 12th October, 1989 and his last drawn wages were Rs. 1,150 plus Rs. 150 HRA p.m. Management denied that petitioner was Advisor of the workers Union. Management denied that no appointment letter was issued to petitioner. It is stated that petitioner had refused to accept the appointment letter, therefore, it was not his responsibility. It is further submitted that management had designing/sampling section in Delhi. Management's request was received from Delhi unit that services of three experienced workers are required to design, therefore, petitioner and two other workers who were found suitable for designing and sampling were issued transfer letters advising them to report at Delhi unit as per provisions of Certified Standing Orders of the management. Workman instead of obeying transfer order provoked other workers of the unit to struck down the work. Consequently, most of the workers of the unit went on illegal strike. Workman did not report for duty at Delhi Unit. Management was forced by the workers to enter into a settlement and as such, management accepted some of the demands of the workers. It is

categorically denied that petitioner was transferred to Delhi to harass him or to obtain his resignation under threat. It is categorically stated that according to Certified Standing Orders of the management, all the workers are liable to be transferred from one section/department to other or from one factory to another. Transfer can take place anywhere in India as may be considered necessary at the discretion of the management from time to time without detriment to workers status and wages. It is stated that petitioner was transferred to Delhi unit in normal course of business. Management denied that no other tailor is working at Delhi, rather it is stated that about 30 workers including tailors are working at Delhi unit.

4. In his rejoinder, petitioner reiterated his claim and controverted the pleas taken in the written statement. In view of the pleadings of the parties, following issues were framed by me on 16th April, 1992 :—

1. Whether reference is not maintainable in view of preliminary objection No. 1 ?
2. Whether workman is gainfully employed ; ?
3. Whether transfer of Shri Shanti Swaroop is legal and justified ? If not, to what relief is he entitled ?
4. Relief.

5. I have heard learned authorised representatives of the parties. My findings on the issues framed are as under :

Issue No. 1 :

6. Learned A. R. of the management argued that transfer orders being managerial prerogative ought not to be in normal circumstances interfered with by the Courts. Management taking into consideration administrative exigencies had transferred the petitioner from Gurgaon unit to Delhi unit, where experienced tailors for the purpose of designing and sampling were required. On the other hand, A.R. of the workman argued that reference is maintainable as Courts can always look into the orders in case *mala fide* is alleged against the administrative authorities.

7. It is well settled that transfer of employees being a managerial prerogative should not be interfered by the Courts in normal circumstances, but the Court would be failing in its duties in the event transfer orders are aftermath of a *mala fide* motive, therefore, Courts are within its jurisdiction to crack the shell even for the purpose of ascertaining the real motive of the impugned transfer order. In the present case also, workers have alleged that they have been transferred from Gurgaon to Delhi in order to harass them on account of their trade union activities and as such, reference is maintainable.

Issue No. 3 :

8. In order to prove this issue, management produced Anil Gupta, Accounts Officer, who stated that he is looking after accounts and transfer work of the management. Witness produced attendance and wages register in respect of the petitioner for the year 1989 and 1990. He categorically stated that petitioner was appointed as tailor w. o. f. 15th October, 1990. He had submitted application Ex. M1 for appointment. Biodata from Ex. M2 was filled, which bears the signature of the petitioner. Petitioner was appointed w.e.f. 15th October, 1990,—vide joining report Ex. M3. Joining report also bears the signature of the petitioner. Witness stated that petitioner was sent appointment letter Ex. M4 through registered post Ex. M5, which was received back. According to witness petitioner was working as contractor on piece rate earlier to 15th October, 1990 and that the management did not have any control on the working timings and leave of the contractor. He further stated that workers of the management are given wage slip and attendance cards. He further stated that about 14 persons were appointed on 15th October, 1990 who were working as piece rate contractor. According to witness, present unit was started in the month of July, 1989. Their another unit is working at Okhla. Tailor operators are also employed in Okhla unit. Keeping in view the exigencies of work some workers were transferred to Okhla unit. He produced Ex. M6 transfer order of the petitioner, which bears his signature at point "A". Witness produced Certified Standing Orders Ex. M7 and Ex. M8 copy of the attendance register. Witness further stated that petitioner was transferred according to the provisions of the Certified Standing Orders. When cross-examined, witness admitted that petitioner was one of the persons who was working as contractor, earlier to 15th October, 1990. He denied that contractors were given bonus for the year 1989-90. He denied that 15 contractors had submitted a complaint to the Labour Officer that they were not given wage slip and attendance card. He also denied having any knowledge that these tailors had constituted a union. He also denied that biodata Ex. M2 was got filled later on. He further stated that petitioner had refused to accept appointment letter, therefore, it was sent to his home address on 14th November, 1990. He denied the suggestion that there is no work of tailors at Okhla unit. He denied the suggestion that management has got another unit at Noida also. Witness admitted that ESI of the petitioner was deducted from the year 1989. He further stated that workers union was formed in the

year January 1989, but he could not tell the names of office bearers of the union. He further stated that no register is maintained for contractors and that payment is made to the contractors on weekly or fortnightly basis. He denied the suggestion that petitioner was transferred on account of his trade union activities. He also denied that petitioner was Advisor of the union. According to witness management did not receive any information that petitioner was Advisor of the union. Witness admitted that workers had gone on strike after transfer of the petitioner. Management produced MW 2 Shri Inderjit Singh, Administrative-cum-Accounts Officer of Delhi unit, who stated that products of their factory are manufactured mainly for export which are besant in specific period. In case any assignment is not sent on time, order is cancelled. He further stated whenever exigencies arises transfer of workers are undertaken from Gurgaon unit to Delhi unit. Prior to the transfer of the petitioner other workers were being transferred from Delhi to Gurgaon. Name of such workers are Ram Chander, Avadh Narain, Ravi Narain, Bali Raj and Ashok Kumar. Witness produced their transfer orders Ex. MW 2/1 to Ex. MW 2/5. He further stated that production is being undertaken at their head office. He produced Ex. MW 2/6 annual provident fund return for the year 1990-91 of Okhla factory. Witness categorically stated that there are only two plants of Stencil Apparels. One is situated at Gurgaon and other is situated at Delhi. On 10th November, 1990 Delhi plant had requested for service of few tailors from Gurgaon for executing some export orders. Petitioner did not join his duties at Okhla when he was transferred,—vide order Ex. M6. He did not send any information at Okhla unit whether he will join or not join his duties. He further stated that no complaint was received from Delhi office that management was not allowing the petitioner to join his duties. He produced attendance register for the period pertaining to 1984 to 1990. He further stated that the plant which is situated at Okhla has been shifted to Vasant Lok, Vasant Vihar New Delhi and the production work is being undertaken there. He further stated that Court may appoint a commission to find out the truth regarding working of the plant at Delhi. When cross-examined, witness denied that factory from Delhi was shifted to Gurgaon. He also denied that Ram Chander and other workers referred to above have also been shifted from Delhi to Gurgaon along with the unit. Witness stated that he had not brought any orders for export of garments during the period when petitioner was transferred to Delhi. He denied having any knowledge that petitioner had reported at Delhi or that they were threatened by the management or that management did not allow him to join duty as they had participated in union activities. He denied having any knowledge if petitioner had sent any complaint against Gurgaon unit before his transfer order was issued. He categorically denied that no production work is undertaken at Delhi. According to petitioner, there are 25 sewing machines at Delhi and that some tailors namely Ram Chander, Ramesh and Kamlesh are working in Delhi unit.

9. On the other hand, workman appeared as WW 1 and reiterated his claim. According to petitioner he was appointed as tailor w.e.f. 4th September, 1989 but no appointment letter was given to him. He further stated that petitioner along with 14-15 other tailors had submitted complaint Ex. W1 on 16th August, 1990. He further stated that workers had constituted union at that time by the name of Gurgaon Factories Workers Union (ATUC) Gurgaon. On the said complaint Labour Inspector had inspected the factory and had asked the management to enter the names of 14 tailors in the attendance register. He had also directed that these tailors should be given wages slip and attendance card. He further stated that earlier he was working on piece rate. It was also decided before the Labour Inspector that petitioner and other tailors should be given appointment letter from the date of their appointment, but the management did not take him on duty according to the settlement before the Labour Inspector. He further stated that they submitted another complaint Ex. W-2 to the Labour Inspector and thereafter management took the petitioner and other tailors on duty. He further stated that management had given appointment letters from the fresh date of appointment and not from earlier date, therefore, they did not take appointment letter. He further stated that papers for registration of workers union were sent on 12th November, 1990. Petitioner stated that he was elected Advisor of the union while Parphati Lal Secretary of the union, therefore, both of them were transferred to Delhi. Petitioner admitted that he had received transfer letter Ex. M 6. In pursuance of the transfer letter he had gone to Okhla and found that there was no work of tailor at Okhla. Management asked the petitioner to wait, but was not allowed to join duty. He further stated that he is not working anywhere, since the date of his termination. When cross examined, petitioner admitted that complaint Ex. W1 and Ex. W2 do not bear his signature and the signature of 14 other tailors. He further stated that he does not have any receipt that the papers for formation of the union were sent on 12th November, 1990, nor any information was sent to the management on that date. He further admitted that he had visited the place of his transfer only once. He also admitted that he had not given any complaint in writing to the management or Labour Inspector that he was not allowed to join duty at the place of his posting by the management. He further stated that he had filed complaint Ex. W4 for not allowing him to join duty at Delhi. He further stated that he had not availed any leave before 15 October, 1990. He also admitted that his provident fund was not deducted. He denied the suggestion that he was working as piece rate contractor with the management earlier to 15th October, 1990. He admitted that Ex. M1, Ex. M2 and Ex. M3 bears his signature. Witness admitted his signature on order Ex. M 6 and stated that he did not refuse to accept the said letter. He denied having any knowledge products are manufactured according to the orders received by the management. He also denied that in case any assignment is not sent on time orders of the said assignment are cancelled. He denied the suggestion that there was no union at the time of transfer of the petitioner. Petitioner admitted that he did not have any personal enmity with the respondent or the staff of the management. He denied the suggestion that production is being undertaken at Okhla.

10. In the present case, the main point for consideration is whether transfer of petitioner is legal or justified or not. Management has categorically stated that petitioner was transferred keeping in view the exigencies of work of Okhla unit,—vide order Ex. M 6. A.R. of the management pointed out that according to clause 21 of the Certified Standing Orders all the workers are liable to be transferred from one section/department to another or from one factory to another. Transfer can take place anywhere in India and may be considered necessary at the discretion of the management from time to time without detriment to worker's status. But petitioner did not join at the place of his posting. On the other hand, petitioner had stated that management transferred him from Gurgaon to Delhi unit in order to victimise him as he had been taking part in trade union activities. Admittedly management has got power to transfer any worker from one factory to another according to clause 21 of the Certified Standing Orders. The only condition is that transfer should not be detrimental to the workers status and wages. Admittedly there is no allegation that the status or wages of the workers were effected on account of transfer. The only allegation of the workers is that there is no production work being undertaken at Okhla unit. Petitioner failed to bring any evidence on record to support this plea. On the other hand, MW 2 Inderjit Singh, Chairman Officer produced attendance register for the years 1984 to 1990 of the Okhla Unit. He also produced provident fund return for the year 1990-91 of the Okhla unit which clearly shows substantial number of workmen were working in the Okhla unit of the management. Petitioner has also failed to substantiate his plea that Stencil Apparels workers union was constituted earlier to the date of transfer i.e. 17th November, 1990. He also failed to produce any document to prove that union was already in existence. Even complaints Ex. W1 and Ex. W2 were sent through Shri Shardha Nand, General Secretary, Gurgaon, Factories Workers Union. Documents Ex. M 3 only shows that decision was taken by the workers to form a union but there is nothing to prove that any union was already constituted or that petitioner was Adviser of the said union. In order to prove the victimisation on account of trade union activities, petitioner should have produced positive evidence that his transfer was undertaken on account of trade union activities. A perusal of complaints Ex. W1 and Ex. W2 clearly shows that these were sent by Shri Shardha Nand, General Secretary, Gurgaon, Factories Workers Union. Complaint Ex. W4 is dated 7th January, 1991 i.e. after the date of transfer order Ex. M 6, which was issued on 17th November, 1990. Petitioner has miserably failed to prove that any workers union was in existence. Petitioner admitted that no information was sent to the management regarding formation of union, nor there is any evidence to prove that any information was sent regarding formation of the union to the labour authorities. MW 2 Sh. Inderjit Singh stated that transfer of the employee was a routine feature. Some other workers, namely Ram Chandor, Swadhi Narain, Ravi Narain, Bali Ram and Ashok Kumar were transferred from Delhi to Gurgaon,—vide order Ex. MW 2/1 to Ex. MW 2/5. MW-2 further stated that petitioner did not join at the place of posting nor he sent any information that he will not join or that he had come to join his duty and was not allowed to do so. From the testimony of MW 2 Inderjit Singh, and MW 1 Shri Anil Gupta, it is apparent that management had transferred the petitioner keeping in view the exigencies of work. It is also proved that management is undertaking manufacture at Okhla unit. Moreover it is management's prerogative to transfer any worker from one unit to another keeping in view the said transfer is not detrimental to the status and wages of the workers. Management has got power to transfer any employee,—vide clause 21 of the Certified Standing Orders. Therefore, management was justified to transfer the petitioner from Gurgaon to Okhla unit.

11. Petitioner did not join at the place of posting though he had received transfer order Ex. M 6. There is no evidence to prove that petitioner had reported at the place where he was transferred. Even in cross examination, petitioner admitted that he had reported at Okhla only once. He also admitted that he did not send any report/complaint to the management or to the labour authorities that he was not allowed to join duty at Okhla. The plea of the worker that there was no work of tailor at Okhla is also not supported by any evidence. Shri Inderjit Singh categorically stated that Shri Ram Chandor, Ramesh and Kamlesh are working at Okhla as tailor. The plea of the worker that management was using unfair labour practice against the petitioner is also not substantiated. According to management, petitioner was working as piece rate contractor earlier to 15th October, 1990 and thereafter, they were appointed by management as tailors w.e.f. 15th October, 1990. The fact that petitioner was working on piece rate is proved from Ex. M1, application submitted by the petitioner, wherein, it is mentioned that petitioner was working with the management w.e.f. 12th August, 1989 on piece rate basis and now on ward he would work on monthly basis. Petitioner admitted having filled biodata Ex. M2. He admitted his signature on Ex. M2 at point A and B. According to joining report Ex. M3 petitioner joined as tailor in reference to the appointment dated 15th October, 1990. He admitted his signature on point "A" on Ex. M3. From these facts it is clear that petitioner was appointed as tailor with the respondent management w.e.f. 15th October, 1990. Petitioner failed to produce any evidence that he was appointed w.e.f. 12th August, 1989 as tailor with the respondent management. As such, petitioner failed to prove that management had used any unfair labour practice against the petitioner in order to victimise him. In view of the above discussion, I am of the confirmed opinion that transfer of the petitioner was legal and justified, therefore, this issue is decided in favour of the management.

Issue No. 2 :

12. No evidence was produced, nor any arguments have been addressed by the petitioner on this issue, therefore, this issue is decided against the management.

Issue No. 4 :

13. In view of my findings on issue No. 3, transfer of the petitioner was legal and justified and the petitioner Shanti Sawroop is not entitled to any relief. Reference is answered and returned accordingly with no order as to cost.

Dated : The 4th May, 1994.

NIRMAI YADAV,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endorsement No. 771-772 dated 31st May, 1994.

A copy is forwarded to :—

1. The Labour Commissioner, Haryana, Chandigarh.
2. The Labour Officer, Gurgaon.

NIRMAI YADAV,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

No. 14/13/87-6 Lab.-292.—In pursuance of the provisions of Section 10 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Government of Haryana hereby publishes the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workmen and the management of M/s. Stencil Apparels Pvt. Ltd., Gurgaon. *(Para 13 of Lab. 292)*

IN THE COURT OF MRS. NIRMAL YADAV, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 349 of 1991
between

SHRI PARBHATI LAL C/O SHRI SHARDHA NANDI, GENERAL SECRETARY,
ATTUC OFFICE, 214/4 MARLA, GURGAON GOVERNMENT OF HARYANA

and

THE MANAGEMENT OF M/S STENCIL APPARELS PVT. LTD., GURGAON.

Present :

Shri Shardha Nand for the workmen.

Shri S. K. Yadav for the management.

AWARD

1. In exercise of the powers conferred by clause (a) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (in short "the Act"), the Government of Haryana hereby publishes the following dispute, between the parties mentioned above, to this Court for adjudication. *(vide Haryana Govt. Lab. Deptt., Endorsement No. 30923-928 dated 14th August, 1991)* :

"Whether transfer of Shri Parbhati Lal is legal and justified and whether he is entitled to any relief?"

2. The facts according to petitioner's claim state that he was employed as a helper with the management at the salary of Rs. 1300 p.m. According to petitioner, he had joined Stencil Apparels Workers Union (ATTUC) Gurgaon along with other workmen and his was a very common one. He had been communicating with the management regarding demands of the workmen. A demand notice dated 15th February, 1991 was submitted to the management and later on 16th February, 1991 demands of the workmen. Management got annoyed and in order to suppress the union, it transferred two workmen namely Shanti Sawroop and Pradeep Kumar were transferred to the factory of Delhi factory. It

is stated that Pradeep Kumar was President and Shanti Saroop was advisor of the union. It is further stated that on 25th January, 1991 a compromise was effected before the Labour-cum-Conciliation Officer and transfer of Pradeep Kumar was cancelled and he was allowed to join at Gurgaon. However, transfer of Shanti Saroop and petitioner was not cancelled. According to petitioner, no worker could be transferred beyond distance of 5 Kilometer according to Haryana Model Standing Orders and as such transfer of the petitioner was illegal and was issued to harass the petitioner.

3. Claim of the petitioner is contested by the management stating that reference is bad in law and not maintainable. It is stated that transfer order is a managerial prerogative and should not be interfered by the Courts. On merits, it is stated that petitioner was appointed on 15th October, 1990 and not on 12th October, 1989 and his last drawn wages were Rs. 1150 plus Rs. 150 FRA p.m. Management denied that petitioner was Secretary to the workers Union. Management denied that no appointment letter was issued to the petitioner. It is stated that petitioner had refused to accept the appointment letter, therefore, it was sent to him by post. It is further submitted that management had designing/sampling section in Delhi. A communication was received from Delhi unit that services of three experienced workers are required at Delhi unit, therefore, petitioner and two other workers who were found suitable for designing and sampling were issued transfer letters advising them to report at Delhi unit as per provisions of Certified Standing Orders of the management. Workman instead of obeying transfer order provoked other workers of the unit to struck down the work. Consequently, most of the workers of the unit went on illegal strike. Workman did not report for duty at Delhi Unit. Management was forced by the workers to enter into a settlement and as such, management accepted some of the demands of the workers. It is categorically denied that petitioner was transferred to Delhi to harass him to obtain his resignation under force. It is categorically stated that according to Certified Standing Orders of the management, all the workers are liable to be transferred from one section/department to other or from one factory to another. Transfer can take place any where in India as may be considered necessary at the discretion of the management from time to time without detriment to workers status and wages. It is stated that petitioner was transferred to Delhi Unit in normal course of business. Management denied that no other tailor is working at Delhi, rather it is stated that about 30 workers including tailor are working at Delhi unit.

4. In his rejoinder, petitioner reiterated his claim and controverted the pleas taken in the written statement. In view of the pleadings of the parties, following issues were framed by me on 16th April, 1992 :-

1. Whether reference is not maintainable in view of preliminary objection No. 1. ?
2. Whether workman is gainfully employed ?
3. Whether transfer of Shri Parbhathi Lal is legal and justified ? If not, to what relief is he entitled ?
4. Relief.

5. I have heard learned authorised representatives of the parties. My findings on the issues framed are as under :

Issue No. 1 :

6. Learned A.R. of the management argued that transfer orders being managerial prerogative ought not to be in normal circumstances interfered with by the Courts. Management taking into consideration administrative exigencies had transferred the petitioner from Gurgaon unit to Delhi unit where experienced tailors for the purpose of designing and sampling were required. On the other hand, A.R. of the workman argued that reference is maintainable as Courts can always look into the orders in case *malafide* is alleged against the administrative authorities.

7. It is well settled that transfer orders being a managerial prerogative should not be interfered by the Courts in normal circumstances, but the Courts would be failing in its duty in the event transfer orders are after math of a *malafide* motive, therefore, Courts are within its jurisdiction to crack the shall even for the purpose of ascertaining the real motive of the impugned transfer order. In the present case also, workers have alleged that they have been transferred from Gurgaon to Delhi in order to harass them on account of their trade union activities and as such, reference is maintainable.

Issue No. 3 :

8. In order to prove this issue, management produced Anil Gupta, Accounts Officer, who stated that he is looking after accounts and transfer work of the management. Witness produced attendance and wage register in respect of the petitioner for the year 1989 and 1990. He categorically stated that petitioner was appointed as tailor operator w.e.f. 15th October, 1990. He had submitted application Ex. M1 for appointment. Biodata from Ex. M2 was filled, which bears the signature of the petitioner. Petitioner was appointed w.e.f.

15th October, 1990, vide joining report Ex. M3. Joining report also bears the signature of the petitioner. Witness stated that petitioner was sent appointment letter Ex. M4 through registered post Ex. M5, which was received back. According to witness petitioner was working as contractor on piece rate earlier to 15th October, 1990 and that the management did not have any control on the working, timing and leave of the contractor. He further stated that workers of the management are given wage slip and attendance cards. He further stated that about 14 persons were appointed on 15th October, 1990 who were working as piece rate contractor. According to witness, present unit was started in the month of July, 1989. Their another unit is working at Okhla. Tailors operators are also employed in Okhla unit. Keeping in view the exigencies of work some workers were transferred to Okhla unit. He produced Ex. M6 transfer order of the petitioner, which bears his signature at point "A". Witness produced Certified Standing Orders Ex. M7 and Ex. M8 copy of the attendance register. Witness further stated that petitioner was transferred according to the provisions of the Certified Standing Orders. When cross examined, witness admitted that petitioner was one of the person who was working as contractor, earlier to 15th October, 1990. He denied that contractors were given bonus for the year 1989-90. He denied that 15 contractors had submitted a complaint to the Labour Officer that they were not given wage slip and attendance card. He also denied having any knowledge that these tailors had constituted a union. He also denied that biodata Ex. M2 was got filled later on. He further stated that petitioner had refused to accept appointment letter, therefore, it was sent at his home address on 14th November, 1990. He denied the suggestion that there is no work of tailors at Okhla unit. He denied the suggestion that management has got another unit at Noida also. Witness admitted that ESI of the petitioner was deducted from the year 1989. He further stated that workers union was formed in January 1989, but he could not tell the names of office bearers of the union. He further stated that no register is maintained for contractors and that payment is made to the contractors on weekly or fortnightly basis. He denied the suggestion that petitioner was transferred on account of his trade union activities. He also denied that petitioner was Secretary of the union. According to witness management did not receive any information that petitioner was Secretary of the union. Witness admitted that workers had gone on strike after transfer of the petitioner. Management produced MW 2 Shri Inderjit Singh, Administrative-cum-Accounts Officer of Delhi Unit, who stated that product of their factory are manufactured mainly for export which are to be sent with in specific period. In case any assignment is not sent on time, order is cancelled. He further stated whenever exigencies arises transfer of workers are undertaken from Gurgaon unit to Delhi unit. Prior to the transfer of the petitioner other workers were being transferred from Delhi to Gurgaon. Name of such workers are Ram Chander, Avadh Narain, Ravi Narain, Bali Raj and Ashok Kumar. Witness produced their transfer orders Ex. MW 2/1 to Ex. MW 2/5. He further stated that production is being undertaken at their head office. He produced Ex. MW 2/6 annual provident fund return for the year 1990-91 on Okhla factory. Witness categorically stated that there are only two plants of Stencil papers, one is situated at Gurgaon and other is situated at Delhi. On 10th November, 1990 Delhi plant had requested for service on few tailors from Gurgaon for executing some export orders. Petitioner did not join his duties at Okhla when he was transferred, vide order Ex. M6. He did not sent any information at Okhla unit whether he will join or not join his duties. He further stated that no complaint was received from Delhi Office that management was not allowing the petitioner to join his duties. He produced attendance register for the period pertaining to 1984 to 1990. He further stated that the plant which was situated at Okhla has been shifted to Vasant Lok, Vasant Vihar New Delhi and the production work is being undertaken there. He further stated that Court may appoint a commission to find out the truth regarding working of the plant at Delhi. When cross examined, witness denied that factory from Delhi was shifted to Gurgaon. He also denied that Ram Chander and other workers referred to above has also been shifted from Delhi to Gurgaon alongwith the unit. Witness stated that he had not brought any orders for export of garments during the period when petitioner was transferred to Delhi. He denied having any knowledge that petitioner had reported at Delhi or that he was threatened by the management or that management did not allow him to join duty as they had participated in union activities. He denied having any knowledge if petitioner had sent any complaint against Gurgaon unit before his transfer order was issued. He categorically denied that no production work is undertaken at Delhi. According to petitioner, there are 25 sewing machines at Delhi and that some tailors namely Ram Chander, Ramesh and Kamlesh are working in Delhi unit.

9. On the other hand, workman appeared as WW 1 and reiterated his claim. According to petitioner he was appointed as tailor w.e.f. 4th September, 19-9 but no appointment letter was given to him. He further stated that petitioner alongwith 14-15 other tailors had submitted complaint Ex. W1 on 16th August, 1990. He further stated that workers had constituted union at that time by the name of Gurgaon Factories Workers Union (AITUC), Gurgaon. On the said complaint Labour Inspector had inspected the factory and had asked the management to enter the names of 14 tailors in the attendance register. He had also directed that these tailors should be given wage slip and attendance card. He further stated that earlier he was working on piece rate basis. It was also decided before the Labour Inspector that petitioner and other tailors should be given appointment letter from the date of their appointment, but the management did not take him on duty according to the settlement before the Labour Inspector. He further stated that they submitted another complaint Ex. W-2 to the Labour Inspector and thereafter a management took the petitioner and other tailors on duty. He further stated that management had given appointment letters from the fresh date of appointment and not from earlier date, therefore, they did not take appointment letter. He further stated that papers for registration of workers union were sent on 12th November, 1990. Petitioner stated that he was elected Secretary of the union while Shanti Saroop as advisor of the union, therefore, both of them

were transferred to Delhi. Petitioner admitted that he had received transfer letter Ex. M 6. In pursuance of the transfer letter he had gone to Okhla and found that there was no work of tailor at Okhla. Management asked the petitioner to wait, but was not allowed to join duty. He further stated that he is not working anywhere, since the date of his termination. When cross examined, petitioner admitted that complaint Ex. W 1 do not bear his signature and the signature of 14 other tailors. He further stated that he does not have any receipt that the papers for formation of the union were sent on 12th November, 1990, nor any information was sent to the management on that date. He further admitted that he had visited the place of his transfer only once. He also admitted that he had not given any complaint in writing to the management or Labour Inspector that he was not allowed to join duty as the place of his posting by the management. He further stated that he had filed complaint Ex. M4 for not allowing him to join duty at Delhi. He stated that he had not availed any leave before 15 October, 1990. He also admitted that his provident fund was not deducted. He denied the suggestion that he was working as piece rate contractor with the management earlier to 15th October, 1990. He admitted that Ex. M1, Ex. M2 and Ex. M3 bears his signatures. According to witness, he is educated upto higher secondary. Witness admitted his signatures on order Ex. M 6 and stated that he did not refuse to accept the said letter. He denied having any knowledge that products are manufactured according to the orders received by the management. He also denied that in case any assignment is not sent on time orders of the said assignment are cancelled. He denied the suggestion that there was no union at the time of transfer of the petitioner. Petitioner admitted that he did not have any personal enmity with the respondent or the staff of the management. He denied the suggestion that reproduction work is being undertaken at Okhla.

10. In the present case, the main point for consideration is whether transfer of petitioner is legal or justified or not. Management has categorically stated that petitioner was transferred keeping in view the exigencies of work of Okhla unit, *vide* order Ex. M 6. N.R. of the management pointed out that according to clause 21 of the Certified Standing Orders all the workers are liable to be transferred from one section/department to another or from one factory to another. Transfer can take place anywhere in India as may be considered necessary at the discretion of the management from time to time without detriment to workers status. But petitioner did not join at the place of his posting. On the other hand, petitioner had stated that management transferred him from Gurgaon to Delhi unit in order to victimise him as he had been taking part in trade union activities. Admittedly management has got power to transfer any worker from one factory to another according to clause 31 of the Certified Standing Orders. The only condition is that transfer should not be detrimental to the worker status and wages. Admittedly there is no allegation that the status or wage of the workers were effected on account of transfer. The only allegation of the worker is that there is no production work being undertaken at Okhla unit. Petitioner failed to bring any evidence on record to support this plea. On the other hand, MW 2 Inderjit Singh, Accounts Officer produced attendance register for the years 1984 to 1990 of the Okhla Unit. He also produced provident fund return for the year 1990-91 of the Okhla unit which clearly shows substantial number of workmen were working in the Okhla unit of the management. Petitioner has also failed to substantiate the plea that Stencil Apparels workers union was constituted earlier to the date of transfer i.e. 17th November, 1990. He has failed to produce any document to prove that union was already in existence. Even complaints Ex. W1 and Ex. W2 were sent through Shri Shardha Nand, General Secretary, Gurgaon Factories Workers union. Documents Ex. M3 only shows that decision was taken by the workers to form a union but there is nothing to prove that any union was already constituted or that petitioner was Secretary of the said union. In order to prove the victimisation on account of trade union activities, petitioner should have produced positive evidence that his transfer was undertaken on account of trade union activities. A perusal of complaints Ex. W1 and Ex. W2 clearly shows that these were sent by Shri Shardha Nand, General Secretary, Gurgaon Factories Workers Union. Complaint Ex. W4 is dated 7th January, 1991 i.e., after issuance of transfer order Ex. M 6, which was issued on 17th November, 1990. Petitioner has miserably failed to prove that any workers union was in existence. Petitioner admitted that no information was sent to the management regarding formation of union, nor there is any evidence to prove that any information was sent regarding formation of the union to the labour authorities. MW 2 Sh. Inderjit Singh stated that transfer of the employee was a routine feature. Some other workers, namely Ram Chander Avadh Narain, Ravi, Narain, Bali Ram and Ashok Kumar were transferred from Delhi to Gurgaon, *vide* order Ex. MW 2/1 to Ex. MW 2/5. MW-2 further stated that petitioner did not join at the place of posting nor he sent any information that he will not join or that he had come to join his duty and was not allowed to do so. From the testimony of MW 2 Inderjit Singh, MW 1 Shri Anil Gupta, it is apparent that management had transferred the petitioner keeping in view the exigencies of work. It is also proved that management is undertaking manufacture work at Okhla unit. More-over it is managements prerogative to transfer any worker from one unit to another keeping in view the said transfer is not detrimental to the status and wages of the workers. Management has got power to transfer any employee, *vide* clause 21 of the Certified Standing Orders. Therefore, management was justified to transfer the petitioner from Gurgaon to Okhla unit.

11. Petitioner did not join at the place of posting though he had received transfer order Ex. M 6. There is no evidence to prove that petitioner had reported at the place where he was transferred. Even in cross-examination, petitioner admitted that he had reported at Okhla only once. He also admitted that he did not send any report/complaint to the management or to the labour authorities that he was not allowed to join duty at Okhla. The plea of the worker that there was no work of tailor at Okhla is also not

supported by any evidence. Shri Inderjit Singh categorically stated that Shri Ram Chander, Ramesh and Kamlesh are working at Okhla as tailor. The plea of the worker that management was using unfair labour practice against the petitioner is also not substantiated. According to management, petitioner was working as piece rate contractor earlier to 15th October, 1990 and thereafter, they were appointed as tailors w.e.f. 15th October, 1990. The fact that petitioner was working on piece rate is proved from Ex. M1, application submitted by the petitioner, wherein, it is mentioned that petitioner was working with the management w.e.f. 4th September, 1990 on piece rate basis and now on ward he would work on monthly basis. Petitioner admitted having filled *bio data* Ex. M2. He admitted his signature on Ex. M2 at point A and B. According to joining report Ex. M3 petitioner joined as tailor in reference to the appointment letter, dated 15th October, 1990. He admitted his signature on point "A" on Ex. M3. From these facts, it is evident that petitioner was appointed as tailor with the respondent management w.e.f. 15th October, 1990. Petitioner failed to produce any evidence that he was appointed w.e.f. 4th September, 1989 as tailor with the respondent management. As such, petitioner failed to prove that management had used any unfair labour practice against the petitioner in order to victimise him. In view of the above discussion, I am of the confirmed opinion that transfer of the petitioner was legal and justified, therefore, this issue is decided in favour of the management.

Issue No. 2 :

12. No evidence has checked was produced, nor any arguments have been addressed by the management on this issue, therefore, this issue is decided against the management.

Issue No. 4 :

13. In view of my findings on issue No. 3, transfer of the petitioner was legal and justified and the petitioner is not entitled to any relief. Reference is answered and returned accordingly with no order as to cost.

The 11th May, 1994.

NIRMAL YADAV,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endorsement No. 769-770, dated 31st May, 1994.

A copy is forwarded to :—

1. The Labour Commissioner, Haryana, Chandigarh.
2. The Labour Officer, Gurgaon.

NIRMAL YADAV,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

No. 14/13/87-6 Lab. 296:- In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following order of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s. Demm Auto Engineering Works, 72, Gurgaon *versus* Mohan Singh :—

IN THE COURT OF MRS. NIRMAL YADAV, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 75 of 1989

between

**SHRI MOHAN SINGH, SON OF SHRI RAM AVTAR SINGH, CARE OF SHRI P.S. RAO
LABOUR LAW ADVISOR, SHANTI NAGAR, NEAR NATIONAL HIGHWAY NO. 8, GURGAON**

.. Workman

and

**M/S. DEMM AUTO ENGINEERING WORKS, 72, INDUSTRIAL AREA, MEHRAULI ROAD,
GURGAON**

.. Management

Present :

None for the workman.

Shri S.K. Goswami for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, (in short 'the Act'), the Governor of Haryana referred the following dispute, between the parties, mentioned above, to this Court for adjudication. *vide* Haryana Government endorsement No. 7045- 51, dated 21st February, 1989 :-

Whether the termination of services of Shri Mohan Singh is legal and justified ? If not, to what relief is he entitled ?

2. The facts according to petitioner's demand notice are that he was appointed with the respondent management w.e.f. 1st October, 1982 at the salary of Rs. 500 per month. However, management illegally terminated his services w.e.f. 10th October, 1988 in violation of the mandatory provisions of the Industrial Disputes Act, 1947. It is stated that petitioner's services were terminated in retaliation to the general demand notice submitted by the petitioner along with other workers.

3. Claim of the petitioners controverted by the management. It is stated that petitioner was appointed on 24th August, 1988 for a period of three months and he was absent from service during probation period on 10th October, 1988. Petitioner worked with the management only for one month and sixteen days and his services were legally dispensed with as per clause 3 of the appointment letter.

4. In his rejoinder, workman reiterated his claim and controverted the pleas taken in the written statement. In view of the pleadings of the parties, following issue was framed on 2nd February, 1990 :-

Whether the termination of services of Shri Mohan Singh is legal and justified ? If not, to what relief is he entitled ?

5. I have learned Authorised Representative of the Management. My findings on the issue framed are as under :-

6. In order to prove their case, management produced MW 1 Shri Rajesh Kapahi, Manager, who stated that petitioner applied for joining the management, *vide* his application Ex. MW 1/A. Thereafter, appointment letter Ex. MW 1/B was issued on 24th August, 1988. He further stated that E.S.I. declaration form Ex. MW 1/C was also submitted on the day. According to witness, petitioner was appointed as helper and was on probation for three months from the date of joining his duties. Petitioner absented from duty on 29th September, 1988, therefore, management terminated his services w.e.f. 10th October, 1988. Petitioner had not worked for 240 days with the respondent management. Management sent letter Ex. MW 1/D to the petitioner for taking his dues, but he did not turn up. Witness produced Ex. MW 1/F, true copy of the attendance register for the period commencing from July 1988 to October, 1988. He also produced Ex. MW 1/G copy of the payment of wages register for the months of August and September, 1988. Witness further stated that ESI returns regarding workman were sent in the month of October, 1988. He never applied for leave on 29th September, 1988, nor he returned for duty on 7th October, 1988. No medical certificate was submitted by the petitioner. Witness categorically denied that management had terminated petitioner's service on account of submission of general demand notice by the workers. When cross examined, witness categorically denied the petitioner having joined the management w.e.f. 1st October, 1982. Witness denied the suggestion that workers were sitting on dharna on 10th October, 1988.

7. After management closed their evidence, case was fixed for evidence of the workman, however, none appeared on behalf of the workman on 15th September, 1993, therefore, petitioner was proceeded against *ex parte*.

8. In the present case, management categorically stated that petitioner joined the service as a helper on 24th August 1988, *vide* appointment letter Ex. MW 1/B. A perusal of letter Ex. MW 1/B shows that petitioner was appointed on probation for a period of three months and his services were liable to be terminated at any time during probation period without any notice. Date of appointment of the petitioner is further proved from the E.S.I. declaration form Ex. MW 1/C. MW 1 Shri Rajesh Kapahi stated that petitioner absented from his duties w.e.f. 29th September, 1988 and thereafter he never reported on duty. Witness produced letter Ex. MW 1/D regarding his absence from duty. Management sent dues through money order. Receipt of the same is Ex. MW 1/E. But the money order was received back with the report that the addressee was not available. According to management petitioner only worked from 24th August, 1988 to 29th September, 1988. This fact is also proved from the absent from the attendance register Ex. MW 1/F and the abstract of payment of wages register is Ex. MW 1/G. From the *ex parte* evidence of the management it is evident that petitioner only worked for about one month and five days and thereafter, he absented from duty. there

fore, his name was struck off from the rolls w.e.f. 10th October, 1988. Petitioner was appointed on probation. It is well proved from the evidence on record that management did not terminate petitioner's services, however, he himself had abandoned the job. Consequently, petitioner is not entitled to any relief.

NIRMAL YADAV,

The 24th May, 1994

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endorsement No. 839-40. dated : The 31st May, 1994

A copy is forwarded to :

1. The Labour Commissioner, Haryana, Chandigarh.
2. The Labour Officer, Gurgaon.

NIRMAL YADAV,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

No. 14/13/87-6Lab./297. In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-Cum-Labour Court, Gurgaon in respect of the dispute between the workmen and the management of M/s. Demm Auto Engineering Works, 72, Gurgaon *versus* Harpal Singh.

IN THE COURT OF MRS. NIRMAL YADAV, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 74 of 1989

between

**SHRI HARPAL SINGH, CARE OF SHRI P.S. RAO, LABOUR LAW ADVISER, SHANTI NAGAR,
NEAR NATIONAL HIGHWAY NO. 8, GURGAON** .. *Workman*

and

**M/S. DEMM AUTO ENGINEERING WORKS, 72, INDUSTRIAL AREA, MEHRAULI ROAD,
GURGAON** .. *Management*

Present :

None for the workman.

Shri S. K. Goswami for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (in short "the Act") the Governor of Haryana referred the following dispute between the parties mentioned above to this Court for adjudication.—*vide* Haryana Government, Labour Department No. 7039—44, dated 21st February, 1989.

Whether the termination of services of Shri Harpal Singh is legal and justified? If not, to what relief is he entitled?

2. The facts according to petitioner's demand notice are that he was appointed with the respondent as Moulder w.e.f. 1st January, 1987 at the salary of Rs. 540 per month. However, management illegally terminated his services w.e.f. 10th October, 1988 in violation of the mandatory provisions of Section 25 F of the Industrial Disputes Act, 1947. It is stated that management terminated his services in retaliation to the general demand notice submitted by workers.

3. Claim of the petitioner is contested by the management stating that petitioner was appointed on 27th July, 1988 on probation for a period of three months as his services were dispensed with in accordance with clause 3 of the appointment letter on 8th October, 1988. It is further stated that petitioner was earlier employed with the respondent w.e.f. 4th April, 1988 but he left the job on 30th June, 1988 after taking his full and final payment. Even on 8th October, 1988 petitioner had received his full and final payment therefore petitioner's services were never terminated by the management.

4. In his rejoinder petitioner reiterated his claim and controverted the pleas taken in the written statement. In view of the pleadings of the parties following issue was framed :-

Whether the termination of services of Shri Harpal Singh is legal and justified ? If not, to what relief is he entitled ?

5. I have heard learned authorised representative of the management. My findings on the issue framed are as under :-

6. In order to prove their case management produced Rajesh Kapahi, Manager who stated that petitioner had joined the management as helper on 4th April, 1988 and he himself left the job on 30th June, 1988. Petitioner executed receipt Ex. MW 1/A on 30th June, 1988 stating that he had received his full and final payment. He was appointed, -vide appointment letter Ex. MW1/B. ESI declaration form Ex. MW1/C was also filled on the same day. Copies of the attendance register Ex. MW1/E and Ex. MW 1/F were produced for the period commencing from April, 1988 to June, 1988. Witness stated that petitioner again approached for the job on 26th July, 1988 and submitted application Ex. MW 1/H as such appointment letter Ex. MW 1/J was issued on 22nd July 1988. ESI declaration form was again prepared on the same day which is Ex. MW 1/K. Management terminated petitioner's service on 8th October, 1988, - vide letter Ex. MW 1/L as no longer required. Petitioner had received his dues as full and final payment and executed the receipt. Witness stated that management had received general demand notice on 11th October 1988, however, petitioner's services were terminated on 8th October, 1988. When cross examined witness denied the signature of the petitioner were obtained on blank papers at the time of appointment. He denied the suggestion that petitioner's services were terminated on account of serving of general demand notice by the workers.

7. After the management closed their evidence case was fixed for evidence of the workman on 15th September, 1993 however on the said date none appeared on behalf of the workman, therefore, workman was proceeded against *ex parte*.

8. Shri Rajesh Kapahi MW1 categorically stated that petitioner worked with the management from 4th April, 1988 to 30th June, 1988. He left the job of his own after receiving his full and final payment. He had executed receipt Ex. MW 1/A. A perusal of the receipt clearly shows that petitioner had left the job after obtaining his full and final payment on 30th June, 1988. Petitioner again joined the management, -vide appointment letter Ex. MW 1/J on 27th July, 1988. His services were, however, terminated w.e.f. 8th October, 1988 as no longer required, -vide order Ex. MW 1/L. Petitioner was employed on probation for three months and his services were terminated during the probation period as such petitioner was not entitled to receive any statutory benefits as required under the Industrial Disputes Act. In cross-examination witness categorically stated that petitioner's services were not terminated on account of receiving the general demand notice from the workers. A perusal of the evidence and documents on record, it is apparent that petitioner's services were legally terminated in accordance with the terms and conditions of the appointment letter. Consequently petitioner is not entitled to any relief. Reference is answered and returned accordingly with no order as to costs.

The 9th May, 1994.

NIRMAL YADAV,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endorsement No. 829-30, dated 31st May, 1994.

A copy is forwarded to :-

1. The Labour Commissioner, Haryana, Chandigarh.
2. The Labour Officer, Gurgaon.

NIRMAL YADAV,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.